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Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~311~~ 2

WILLIAM SCHNEIDERMAN,

Petitioner,

against

THE UNITED STATES OF AMERICA.

BRIEF AMICUS CURIAE OF THE AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PEARL M. HART,
Attorney for American Committee
for Protection of Foreign Born.

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After petitioner had been a naturalized citizen for thirteen years, his citizenship was cancelled. The grounds for such cancellation were that the oath of attachment to the constitution taken by the petitioner at the age of 21 was false; that for the preceding five-year period he had not conducted himself as a person entitled to naturalization; that he had imposed upon the court in failing to reveal his membership in a political party. The sole evidence to support these contentions was the petitioner's membership in the Communist Party of the United States or its predecessor organizations. Despite the fact that the naturalization law did not make such membership a ground for denial of citizenship, and consequently the naturalization court asked the petitioner no question concerning such

membership, despite the fact that petitioner had resided lawfully in the United States since the age of three and had an unblemished record as a law-abiding citizen, thirty-one years after he had come here his citizenship was forfeited. This was done because in the cancellation proceedings the court assumed the right to review the judgment of the original naturalization court interpreting the ideology of a political party and imputing such interpretation to the petitioner retroactively despite his positive testimony to the contrary, and despite substantial evidence in the record that there were Party commentators and independent competent students and analysts of economic theory who supported petitioner's interpretation.

In effect, though not in form, the Court's decision amounts to judicial legislation. Lacking the statutory power to take away a person's citizenship because he is a member of a certain political party, the Court has reached the same result by assuming that petitioner must years before have held objectionable views solely because he was a member of that party. The situation is so fraught with danger that only the most exacting proof would justify the result arrived at below. That proof the record does not furnish.

Especially, since serious constitutional and social questions are involved, it is no answer in this Court for the Government to say that there is some evidence to support the findings below.

> *Knoxville* v. *Knoxville Water Co.*, 212 U. S. 1, 7-8;
> *South Carolina State Highway Department* v. *Barnwell Brothers, et al.*, 303 U. S. 177, 191-2;
> *City and County of San Francisco* v. *Market Street Railway Co.*, 98 F. (2d) 628, 634—C. C. A. 9 (1938), certiorari denied 305 U. S. 657.

Actually, that is not the case. There is an essential link in the evidence that is wholly missing. When certain writ-

ings may indicate that a party sponsors an objectionable doctrine and the writings of other party leaders and nonpartisan commentators state that it does not, there is hardly sufficient basis for a court to find that even the *political party* holds the objectionable tenet. But without more,—and nothing more is shown in this case,—there is completely lacking any evidence that would charge an *individual member* with the undesirable views.

Serious social implications are involved in what the Government would dismiss as a mere question of evidence. If, instead of the requirement that vested rights can be destroyed only on clear and convincing evidence, missing links may be supplied, as they were below, then this Court will have sanctioned an indirect method of penalizing membership, otherwise legal, in a political party.

If the decision below is not reversed the safeguards—designed to insure that citizenship acquired by naturalization will not be given unfairly "an unstable status" (Woolsey, J., *United States* v. *Marini*, 16 F. Supp. 963, 965),—will be swept away. No right or privilege obtained by virtue of an oath of allegiance, whether in naturalization proceedings or otherwise, would be secure. Any such right or privilege could be forfeited at any indefinite time in the future if the Government should decide that a person, because of attributed political, social, or economic beliefs could not sincerely have taken the oath of allegiance. Such a conclusion cannot be squared with traditional guaranties of security of opinion. Thousands of government and other licensed employees, thousands of naturalized citizens would be rendered insecure because they would be subjected to the limitless power of a tribunal holding different views.

Respectfully submitted,

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for Protection of Foreign Born.